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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WRIT PETITION (CIVIL) NO. 13037 of 2004**

% **Date of Decision** : March 17, 2006.

NET RAM CHOURASIYA.... Petitioner in WP(C).Nos.11278 & 17412/2004.
KALPANATH YADAV ... . Petitioner in WP(C) No.13037/2004.
Through Mr. K.C. Mittal, Advocate.

VERSUS

UNION OF INDIA & ORS. .... Respondents
Through Mr. Kailash Gambhir with Mr. Gaurav Sharma, Advocates.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE MR.JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

For detailed judgment, see W.P(C) No. 17343/2004 (Shyam Singh v. Union of India & Ors) pronounced on 17.3.2006.

(SANJIV KHANNA)
JUDGE

(DR.MUKUNDAKAM SHARMA)
JUDGE

March 17 , 2006.
vkr/P.

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SHYAM SINGH .... Petitioner in WP(C) No.17343/2004.
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HON'BLE MR.JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J:

1. These are a group of writ petitions involving similar question of law and facts and, therefore, being disposed of by this common judgment. At the time of arguments W.P.(C) 17343/2004 titled *Shyam Singh versus Union of India and Others* was treated as a lead case and we will be referring to the facts of this case. However, we were informed that the facts of the other cases are not different.

2. The petitioner was/is an employee of Border Security Force (hereinafter referred to as respondent-BSF, for short) and was sent on deputation to Intelligence Bureau for a period of five years. Even

after the expiry of the said period, the petitioner continued to be on deputation with the Intelligence Bureau and he was not repatriated to his parent organisation. It is the contention of the petitioner that he should be deemed to have been absorbed in Intelligence Bureau, immediately on completion of five years of deputation servie. In this regard reliance has been placed upon judgment of the Supreme Court in the case of *Rameshwar Prashad verus U.P. Rajkiya Nirman Nigam Limited,* JT (1999) 7 SC 44. It is also the contention of the petitioner that Intelligence Bureau has from time to time recommended the case of the petitioner for absorption but the parent department, i.e. BSF has wrongly and illegally not given its consent for absorption. Allegations of discrimination have also been made with the allegation that the parent department has given consent or no objection certificates for absorption of juniors/others.

3. Similar contentions were also raised by the petitioner before the learned Central Administrative Tribunal but the said contentions were rejected by relying upon decision of Delhi High Court in the case of *Satender Pal and Others versus Union of India and Others* in Civil Writ No. 7406/2002 decided on 20th November, 2002. The Tribunal also relied upon its Full Bench decision, inter alia, holding that deputationists cannot claim for deemed absorption in Intelligence Bureau and they also do not have any right to be considered for absorption, without consent of the parent department in view of the Office Memorandum dated 30.1.1992.

4. Learned counsel for the respondent in addition to relying upon the order of the Tribunal, has also referred to decision by this Court in W.P(C) No. 7989/2005 titled *Santosh Kumari versus Union of India and Others* decided on 6.5.2005. In the said decision, this Court relied upon several earlier decisions including *Arjun Singh Negi versus Union of India* in Civil Writ No. 2366/2003 and *Constable Nafe Singh versus Union of India and Others*, Civil Writ No. 5220/1997. In the last case, this Court has relied upon judgment of the Supreme Court in the case of *State of Madhya Pradesh versus Ashok Deshmukh and Another* , (1988) 3 SLR 336.

5. We have considered the submissions made by the learned counsel for the parties. In view of the decisions of this Court in the case of *Arjun Singh* (supra), Nafe Singh (supra) and Santosh Kumari (supra), there cannot be any dispute that the deputationists have no legal and vested right to claim absorption and resist repatriation to their parent department.

6. As per the Intelligence Bureau (Non-Gazetted) Recruitment Rules, 1982 (hereinafter referred to the Rules, for short) 75% of the posts of Security Assistant in Intelligence Bureau were/are to be filled up by direct recruitment and 25% of the posts were/are to be filled up by deputation/transfer. Suitable persons from State police service or Central Police Organisations or Defence Forces were/are taken on deputation in Intelligence Bureau. As per the recruitment rules, ordinarily the deputation period should not exceed five years but the same can be extended by the borrowing

department. It may also be noticed that there is no provision under the Rules for permanent absorption for employees who come on deputation. However, there is an Office Memorandum of Intelligence Bureau dated 31.1.1992 under which subject to certain conditions like good service records etc., officers who come on deputation can be absorbed but the number of absorbees should not exceed 12.5% of the persons in any rank.

7. In the light of the Rules and the Office Memorandum dated 31.1.1992, we proceed to examine case law on the subject. In the case of *Rameshwar Prashad* (supra), the deputationists had applied to U.P. Rajkiya Nirman Nigam Limited for absorption through proper channel though they did not have no objection certificate from their parent department. The relevant service rules in the said case envisaged absorption of deputationists on certain terms and conditions. Further under Rule 4 and 5 of U.P. Absorption of Government Servants in Public Undertaking Rules, 1984, no Government servant was ordinarily permitted to remain on deputation for period exceeding five years. Keeping all these aspects, Supreme Court held as under:-

> **14.** "We agree with the learned counsel for Respondent 1 and make it clear that an employee who is on deputation has no right to be absorbed in the service where he is working on deputation. However, in some cases it may depend upon statutory rules to the contrary. If the rules provide for absorption of employees on deputation then such employee has a right to be considered for absorption in accordance with the said rules. As quoted above, Rule 16(3) of the recruitment rules of the Nigam and Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 provide for absorption of employees who are on deputation.
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> **15.** In the present case, considering the facts, it is apparent that inaction of Respondent 1 of not passing the order either for repatriation or

absorption qua the appellant was unjustified and arbitrary. On the basis of Rule 16 of the recruitment rules, the appellant was appointed on deputation in May 1985. He was relieved from his parent department on 18-11-1985 and joined the Nigam on 19-11-1985. Under Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984, he was required to file an application for his absorption in employment of the Nigam. Thereafter on the basis of letter dated 22-12-1987 written by the GM (HQ) and the letter dated 30-12-1987 written by the GM (NEZ), he opted for continuation and absorption in the service of the Nigam by letter dated 31-12-1987. The General Manager (NEZ) by letter dated 17-9-1988 wrote to the GM (HQ) that the appellant's service record was excellent; he was useful in service and as he was about to complete 3 years on deputation, appropriate order of absorption be passed. Nothing was heard from the General Manager. Further on 19-11-1990, as soon as the appellant completed 5 years of deputation, his deputation allowance was stopped with effect from that date. The appellant continued in service without any break. Rule 4 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 which was admittedly applicable, provides that no government servant shall ordinarily be permitted to remain on deputation for a period exceeding 5 years. Nothing has been stated by the Nigam as to why he was not repatriated. If the appellant was not to be absorbed, he ought to have been repatriated in the year 1990 when he had completed 5 years of service on deputation. By not doing so, the appellant is seriously prejudiced. The delay or inadvertent inaction on the part of the officers of the Nigam in not passing appropriate order would not affect the appellant's right to be considered for absorption in the service of the Nigam as provided in Rule 16(3) of the recruitment rules.

16. Further, from the record it appears that the appellant was to be absorbed in service but in-service employees filed writ petition and obtained an interim order restraining the Nigam from absorbing the deputationist; the Nigam failed to pass any order absorbing him. Subsequently, when the appellant approached the High Court and the High Court directed the Nigam to consider his representations, the impugned order rejecting the appellant's representations was passed. In the said order, it is stated that:

(*a*) it was a policy decision;

(*b*) some Engineers who were in service objected to the absorption; and

(*c*) the High Court has passed interim order on 17-7-1991.

17. In our view, it is true that whether the deputationists should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent 1 cannot act arbitrarily by picking and choosing the

> deputationists for absorption. The power of absorption, no doubt, is discretionary but is coupled with the duty not to act arbitrarily, or at the whim or caprice of any individual. In the present case, as stated earlier, the General Manager (NEZ) specifically pointed out as early as in the year 1988 that the appellant's service record was excellent; he was useful in service and appropriate order of his absorption may be passed. His application for absorption was within three years as provided in Rule 5. There is nothing on record to indicate that for any reason whatsoever, he was not required or fit to be absorbed or the power under Rule 5(1) of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 was not required to be exercised in his favour. Interim order dated 17-7-1991 passed by the High Court would not be applicable in the case of the appellant because his case was considered for absorption in the year 1988. Further on completion of five years on 19-11-1990 he could not have ordinarily been continued on deputation in the service of the Nigam. It is apparent that he was absorbed from 19-11-1990 because from that date his deputation allowance was also discontinued. If he was to be continued on deputation, there was no reason for non-payment of the deputation allowance. So on the basis of the statutory rules as well as the policy, the appellant stands absorbed in the service of the Nigam."

8. Learned Tribunal also in its order dated 5th July, 2004 has noticed that lien of Rameshwar Prasad had been terminated w.e.f. 30th April, 1994 and therefore, it was not necessary for the Supreme Court to examine and go into the question of necessity or otherwise of the no objection certificate for absorption from the parent organisation. This is not so in the present case.

9. In the case of the petitioner, the lending/parent department i.e. Border Security Force, has expressed its inability to issue no objection certificate for the proposed absorption of the petitioner on the ground that he has not completed 20 years of service. It is further stated that as per policy adopted by Border Security Force, service of 20 years in the said force is required for grant of N.O.C. for permanent absorption in another organisation. The

petitioner was appointed in Border Security Force in the year 1987 and had put in about 16 years of service in Border Security Force and, therefore, in view of the policy decision taken by them no objection certificate was not issued for permanent absorption of the petitioner in Intelligence Bureau. It may also be relevant to state here that no one has a right to claim permanent absorption in another department and courts normally hesitate in issuing a Mandamus for grant of no objection certificate unless it can be shown that the parent department has acted capriciously or in an arbitrary manner amounting to violation of Articles 14, 15 and 16 of the Constitution of India. The parent department has discretion not to grant no objection certificate in terms of their policy guidelines. No objection certificate can also be denied where the parent organisation feels that it requires service of an employee for administrative or operational requirement/ground.

10. The DOP&T O.M dated 5.1.1994 states that period of deputation is normally subject to a maximum period of three years except for posts where longer tenure is prescribed in the recruitment rules. As per the recruitment rules in question, the period of deputation should not ordinarily exceed five years but the same may be curtailed or extended by the borrowing authority. The recruitment rules further provide for extension of deputation period beyond five years subject to certain conditions including approval from the Secretary from the 6th year and approval of the concerned Minister/Ministry for the 7th Year. The said O.M. also provides that any extension beyond the second year in excess of

the period prescribed, the deputationists would not be entitled to draw deputation/duty allowance. In the case of the petitioner, the deputation tenure was extended beyond the 7th year after obtaining concurrent approval of the competent authority and, therefore, in terms of O.M. Dated 5.1.1994 he was not being paid deputation allowance. It is, therefore, incorrect to state that the deputation allowance was not being paid to the petitioner because he was permanently absorbed.

11. Supreme Court has examined the concept of deputation and right of absorption of a deputatiionist in the case of *Kunal Nanda varsus Union of India and Another* , (2000) 5 SC 362 wherein it has been observed as under:-

> **6.** "On the legal submissions also made there are no merits whatsoever. It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in *Rameshwar Prasad* v. *M.D., U.P. Rajkiya Nirman Nigam Ltd.* is inappropriate since the consideration therein was in the light of the statutory Rules for absorption and the scope of those Rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree needs mention, only to be rejected. The stand of the respondent Department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e. a degree is a must and essential and that there could be no comparison of the claim of such a person with

one to be dealt with on promotion of a candidate who is already in service in that Department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim."

12. Similarly, in the case of *State of Punjab versus Inder Singh reported in (1997) 8 SCC 372* it has been held as under :-

> "**18.** The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.
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> **19.** It is no doubt really harsh on the respondents to be sent back after they have served the CID for number of years in higher rank though on ad hoc basis and now when they go back they have to work either as Constables or Head Constables."

13. In the case of Mahesh Kumar k. Parmar versus S.I.G. Of Police reported in (2002) 9 SCC 455, it has been observed by the Supreme Court that unless rules contemplate permanent absorption of employees on deputation no mandamus can be

issued.

14. In the case of *Chander Pal Singh versus Union of India* (2003) Vol. II AD (Delhi) 772, it has been held that policy decision was within the domain of the parent department and it was for the said parent department to decide whether it should agree to send out its employees and also lay down parameters and on the basis of administrative convenience decide whether or not to issue no objection certificate. It was further held that the basic principle underlying deputation was/is that a person can always be repatriated to his parent department to serve at his substantive post. A deputationist cannot assert any right to claim absorption. Absorption can only be claimed as a matter of right, if it is based upon any statutory rules or some provision having force of law.

15. In view of the above, we do not find any merit in the present writ petition. However, we may add a word of caution. A large number of writ petitions and original applications have been filed challenging and questioning orders passed by Border Security Force and other Central Police Forces refusing to grant no objection certificates for absorption in the borrowing organisation like Intelligence Bureau, C.B.I. etc. Allegations have also been made that favourtism, arbitrariness and pick and choose policy is adopted by the parent departments. Normally, courts do not interfere but it is desirable that there should be transparency and openness and clear-cut policy in the parent departments, so that these allegations are not repeatedly made and no doubt is created. We expect the Border Security Force would adopt such a policy soon and report compliance. When such allegations are repeatedly made with instances and examples, the morale and discipline is the first and foremost casualties. We may mention

here that the petitioner in this case has also made allegations that in other cases, no objections certificates were issued by the Border Security Force authorities even if a deputationist had not completed 20 years of service in the parent department. We do not think that this can be a valid ground to issue Mandamus to Border Security Force to issue no objection certificate as this would be issuing a direction contrary to the policy of Border Security Force. Further, a wrong or incorrect decision taken by Border Security Force, contrary to its own policy, in a particular case cannot normally be a ground to direct issue of no objection certificate in another case. This will only amount to giving judicial approval to a wrong decision and compelling the authorities to take another wrong decision. It is well settled that Article 14 is a positive concept and no direction can be issued on the plea of discrimination, wherein the earlier decision itself was improper and wrong. In view of the above findings, we find no merit in the present writ petition and other connected writ petitions and they are dismissed. However, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR.MUKUNDAKAM SHARMA)
JUDGE

March 17th, 2006.
vkr/P.